



Tribal Historic Preservation Office

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Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: WT Docket No. 17-79 / Accelerating Broadband Deployment by Removing Barriers to Infrastructure Investment and Revising the Historic Preservation Review Process for Wireless Facility Deployments

One of the issues we have seen brought up by the wireless industry is the lack of cultural properties being destroyed. It seems this is in part being promoted to say these types of wireless infrastructure projects are not truly federal undertakings as defined under the National Historic Preservation Act and have no potential for affecting cultural resources. This is an erroneous claim on several fronts. There is little doubt these are undertakings as defined under 36CFR800. An undertaking is a "project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal Agency, including those carried out on behalf of a Federal agency; those carried out with federal financial assistance; and those requiring a federal permit, license or approval." The projects under the FCC's TCNS clearly fall into the category of a Federal undertaking. The question of the affect or lack there of on historic properties is another matter.

Industry have stated in their deployment of infrastructure, they have not found or damaged any tribal cultural and/or historic properties and they have used this argument to say the FCC TCNS process should be limited. We feel there are several issues with this line of thought. Indeed, we see lack of destruction of cultural properties as a sign of success of the program, rather than a justification for limiting tribal involvement. This would be like saying "Our drinking water is clean, so we can get rid of the E.P.A." The lack of destroyed cultural properties is a testament to the working relationship with industry, tribes, and the FCC in fulfilling their collective obligation under the National Historic Preservation Act and to the people of the United States.

Working with Tribal Nations has allowed the FCC to be on the cutting edge of cultural resource management. The Advisory Council as well as many of our other federal partners have acknowledged the singular understanding of cultural resources and insights that Tribal Nations bring to the table. At this time, the FCC stands above all other federal agencies in upholding its trust responsibilities to tribes relating to cultural resources. For generations our sites were paved over, dug up, and otherwise destroyed in the name of progress. It should be clear, we do not stand in the way of progress and moving forward; however, it is our belief and it is clear from the National Historic Preservation Act, that we as people of the United States – no matter our cultural background - have a vested interest in the protection and preservation of our history. Our tribal registers; our elders, our site databases, and our participation in the process are essential to truly upholding the letter and spirit of the law. Tribal nations are often the only ones who have the insight to properly identify and evaluate historic properties. By identifying and evaluating these properties during the early stages of consultation we have been able to adjust projects to avoid impacts and will still allowing the project to take place in a timely manner.

The FCC has been able to do something that is truly unique – they have real tribal participation on their undertakings. We have fostered a good working relationship with many of our partners in industry as well as our federal partners. Through this relationship we have identified cultural sites, and protected many of them. When there has been an issue, our partners in industry have been very responsive to our needs as tribes in working out a solution to mitigate the adverse affect to the cultural properties – this most often takes place without ever writing a letter of “adverse effect.” We often are working privately with our partners in industry to move the project or another such activity so our cultural properties can be protected. We try and quickly contact industry partners when there is an issue and work to resolve it in a way to where they are in compliance with the law, while not delaying their project. Sometimes this is as simple as moving a project as little as 20 feet. Some in industry have looked to our annual Park Service THPO reports to claim there are not cultural sites being saved. This is flawed logic. The THPO reports to the NPS do not require tribes to disclose cultural sites in its annual report.

We are proud of our record working with federal agencies over the years and in particular our relationship with the FCC; however, there are several reasons why tribes do not publish or give out where sites are and by extension where significant sites are not. While previous surveys and results of those surveys are available to professionals, tribal information on site locations remains the intellectual properties of the tribe. There are no requirements for tribes to divulge site information within 36CFR800 – the implementing regulation for Section 106 of the NHPA. Certainly there is no requirement to publish information in reports. Indeed, there are several provisions within 36CFR800 to protect tribes and the locations of significant cultural properties. “The agency official should address concerns raised about confidentiality pursuant to § 800.11(c).” If more information is needed the Advisory Council can ask for it.

One of the things industry often asks the tribes to do is “Just let us know where the sites are not and we can plan on just building around them.” This “just circle all the sites” approach is in no way doable for the tribe as many of our sacred sites and historic

properties are very sensitive in nature. This is not the way the 106 process works. It is by its nature a reactive process. There are many reasons to “clear” a project. Sometimes there are no properties affected by an undertaking and it is given a clearance for that reason; however, there are other times that a particular design will not affect cultural resources – if a design were to change maybe it may affect a significant cultural property. Sometimes cultural properties are so sensitive in nature that tribes will not disclose the nature of the site. Sometimes there are complex cultural taboos and reasons behind the disclosure or non-disclosure of a cultural property. Native American sites have long been exploited, looted, and desecrated – part of the National Historic Preservation Act and the consultation with tribes is to ensure that federal undertakings do not do this. While our federal trustees seem to understand this and are obligated under federal law to not disclose the nature and locations of cultural sites, industry has no similar obligation or many times an understanding. The hundreds of years of exploitations and destruction of Native American culture and cultural sites have fallen nothing short of genocide. Our medicines are exploited. Some of our most sacred places have been destroyed. Our sacred has been made profane – being desiccated and put on display. This has taken a toll on our people. If not for the bravery of our ancestors, the tenacity of our leaders, and the strength of our people we would not still be here. We are here though. Processes like the TCNS process are working for us. They are also working for the FCC. They are also working for industry. We should all be celebrating a process that has been a success, not looking to dismantle it. We reiterate, many of industries complaints can be addressed by the FCC and tribes by setting a uniform fee schedule.

In closing, we would like to recommend a working group, who shall be comprised of Tribal representatives, ACHP, and FCC, be established to address these specific issues.

Thank you for your time and consideration in this matter. Please contact my office if you have any questions.

Sincerely,



Dianne Desrosiers
Tribal Historic Preservation Officer
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